

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

**SETTLEMENT AGREEMENT AND
MUTUAL RELEASE OF ALL CLAIMS**

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS ("Settlement Agreement") is entered into and made effective on the 21st day of January, 2016, by and between Vocational Solutions of Henderson County, Inc., a North Carolina non-profit corporation, ("VSHC"), and Smoky Mountain Local Management Entity/Managed Care Organization ("Smoky"). The foregoing parties are at times hereinafter referred to individually, as a "Party," and collectively, as the "Parties."

WITNESSETH:

WHEREAS, Smoky is a local management entity/managed care organization ("LME/MCO") as defined in N.C.G.S. §122C-3(20c), and exists as a local political subdivision of the State of North Carolina pursuant to N.C.G.S. §122C-116. Pursuant to contracts with the North Carolina Department of Health and Human Services ("DHHS"), Smoky is responsible for management and oversight of all publicly-funded mental health, intellectual/developmental disabilities and substance use/addiction ("MH/IDD/SA") services for individuals whose Medicaid originates from a 23-county catchment area that includes Alexander, Alleghany, Ashe, Avery, Buncombe, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes and Yancey counties (the "Catchment Area"); and

WHEREAS, pursuant to Sections 1915(b) and 1915(c) of the Social Security Act (42 U.S.C. §1396n(b) and (c)), the U.S. Department of Health and Human Services has waived portions of North Carolina's traditional fee-for-service programs and replaced them with a managed care program (the "1915(b)/(c) Medicaid Waiver"). Smoky operates as a Medicaid Prepaid Inpatient Health Plan (pursuant to 42 C.F.R. § 438.2) on a capitated per member per month basis pursuant to its contract with the DHHS Division of Medical Assistance and in accordance with the 1915(b)/(c) Medicaid Waiver; and

WHEREAS, under the 1915(b)/(c) Medicaid Waiver, Smoky contracts with a limited network of providers (the "Closed Provider Network") to provide MH/IDD/SA services to

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eligible Medicaid beneficiaries originating from Smoky's Catchment Area ("Smoky Health Plan Members"); and

WHEREAS, under its contract with DHHS, applicable federal and state laws and regulations, Smoky is responsible for conducting program integrity activities, including identifying and recovering overpayments made to providers within Smoky's Closed Provider Network; and

WHEREAS, VSHC has entered into annual contracts as a service provider in Smoky's Closed Provider Network to provide certain services to Smoky Health Plan Members under the 1915(b)/(c) Medicaid Waiver ("Provider Contracts"). Effective July 1, 2013, the Parties entered into a one-year Procurement Contract for Provision of Services. Again effective July 1, 2014, the Parties entered into a one-year Procurement Contract for Provision of Services. Effective July 1, 2015, the Parties entered into a one-year Procurement Contract for Provision of Services; and

WHEREAS, Smoky, in accordance with the Provider Contracts, conducted a post-payment targeted review for Medicaid and State paid claims for ADVP and Innovations services for 2013 and 2014; and

WHEREAS, Smoky issued a Notice of Overpayment dated June 1, 2015 concerning Investigation No. 1410160084SBMP (the "Notice of Overpayment"), notifying VSHC of Smoky's determination that VSHC had received an overpayment of Medicaid funds in the amount of \$45,347.40; and

WHEREAS, VSHC filed a timely Request for Reconsideration concerning the Notice of Overpayment to Smoky's Program Integrity Reconsideration Panel; and

WHEREAS, after VSHC was given proper notice and an opportunity to be heard, Smoky's Program Integrity Reconsideration Panel revised the amount identified in the Notice of Overpayment to \$37,994.82 and issued a Notice of Decision on August 10, 2015 ("Notice of Decision"); and

WHEREAS, VSHC filed a petition for a contested case hearing before the North Carolina Office of Administrative Hearings on November 13, 2015, identified as case file number 15 DHR 08510, ("OAH Action"), against "North Carolina Department of Health and Human Services, Division of Medical Assistance, and its Agent, Smoky Mountain LME/MCO"; and

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WHEREAS, the Parties (and North Carolina Department of Health and Human Services, Division of Medical Assistance (“DMA”)) agreed to an appointment of a certified mediator pursuant to 26 NCAC 03.0202(C) in the OAH Action; and

WHEREAS, Administrative Law Judge Fred Morrison served as Mediator in a telephonic mediation between the Parties held on January 21, 2016 in the OAH Action; and

WHEREAS, the Parties have mediated their claims successfully and, in order to avoid the uncertainty, time and expense of litigation, desire to and have agreed to resolve any and all matters and things in dispute between and among them relating to Notice of Overpayment, Notice of Decision, OAH Action, and related Smoky Investigation No. 1410160084SBMP, without any further trouble or expenses, on the terms and conditions set forth in this Settlement Agreement.

NOW, THEREFORE, for and in consideration of the promises and premises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each Party hereto, the Parties, for themselves and their predecessors, successors, officers, managers, assigns, directors, employees and agents, represent and agree as follows:

1. ***Settlement Payment:*** VSHC agrees to owe and pay \$19,750.00 (“Settlement Amount”) in full satisfaction and settlement of the Notice of Overpayment, Notice of Decision, OAH Action, and related Smoky Investigation No. 1410160084SBMP, as follows:

a. VSHC shall pay a total of six payments to Smoky, with five (5) equal payments of \$3,291.67 due and payable on or before the last day of each month beginning January 31, 2016 and ending on May 31, 2016 and a final payment of \$3,291.65 due and payable on or before June 30, 2016.

b. Each payment shall be paid in good funds by certified or official bank check and shall be made payable to "Smoky Mountain LME/MCO" and delivered to Smoky at 200 Ridgefield Court, Suite 206, Asheville, North Carolina 28806 no later than 5:00 p.m. eastern standard time on the due date as described above.

c. VSHC owes no interest or penalties as long as it pays the Settlement Amount in accordance with the terms of this Settlement Agreement.

2. ***Acceptance of Settlement Amount:*** Smoky agrees to accept the Settlement Amount on the terms set forth in Paragraph 1 above in full satisfaction and settlement of the

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Notice of Overpayment, Notice of Decision, OAH Action, and related Smoky Investigation No. 1410160084SBMP.

3. ***Dismissal of OAH Action:*** Promptly following delivery to VSHC of this Settlement Agreement executed by Smoky, VSHC shall cause to be executed and delivered to OAH a Notice of Voluntary Dismissal **With** Prejudice of the OAH Action against Smoky and DMA in proper form for filing and service. VSHC hereby directs, and agrees to instruct, its legal counsel, Robert Shaw of the law firm Gordon & Rees, LLP to promptly sign any and all documentation necessary to effectuate a dismissal of all pending claims by VSHC against Smoky.

4. ***Representations by VSHC:*** VSHC represents and warrants, as follows:

a. VSHC has not transferred, assigned, encumbered or shared rights, interest or title in, to or under the Settlement Agreement and warrants that upon execution of this Agreement that no other person or entity shall have any of VSHC's rights in this Settlement Agreement;

b. Except for the OAH Action, there is no litigation or dispute against Smoky hereto not resolved by this settlement.

5. ***Mutual Release:*** In consideration of the dismissal with prejudice of the OAH Action and the Settlement Amount referenced above, and subject to the obligations and promises set forth in this Settlement Agreement, the Parties hereby release, acquit, and discharge each other, and their respective agents, insurers, and assigns; their past, present, and future legal entities and respective successors and assigns; and their respective shareholders, directors, officers, managers, members, employees, attorneys, and agents, whether herein named or referred to or not, of and from any and all actions, causes of action, claims, demands, liabilities, obligations, damages, costs, attorneys' fees, loss of service, expenses, compensations, and all consequential, punitive, and treble damages of whatsoever kind or nature, whether known or unknown and whether contingent or liquidated, whether at law or in equity, from the beginning of time to and including the effective date of this Settlement Agreement, which arise out of the Notice of Overpayment, Notice of Decision, OAH Action, and related Smoky Investigation No. 1410160084SBMP.

6. ***No Admission of Liability:*** The Parties hereto agree that this Settlement Agreement is a settlement of disputed claims, and that neither this Settlement Agreement nor the

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performance of any action hereunder shall be deemed an admission of any wrongdoing, nonconformity, error, or other deficiency by or liability of any Party.

7. ***Advice of Legal Counsel:*** The Parties acknowledge that they are entering into this Agreement of their own accord and without coercion or pressure of any kind; that the Parties have sought and obtained or had the opportunity to obtain independent legal advice from counsel of their own selection; that they have been duly apprised of or had the opportunity to be duly apprised of their respective legal rights, whether legal or equitable, and regardless of whether arising under the laws of the United States, any territory thereof, or any foreign jurisdiction; that all of the provisions of this Settlement Agreement, as well as all questions pertinent thereto, have been fully and satisfactorily explained to them; and that they have given due consideration to such provisions and questions and answers and each understands them clearly.

8. ***Severability:*** The provisions of this Settlement Agreement are severable. If any provision of this Settlement Agreement is held invalid, illegal, or unenforceable, the remainder of the Settlement Agreement shall remain in full force and effect, provided the essential purposes of the Settlement Agreement are maintained.

9. ***Governing Law:*** The laws of the State of North Carolina shall govern and control the validity, interpretation, performance, and enforcement of this Settlement Agreement, and the proper venue for any dispute arising out of the Settlement Agreement shall be the Superior Court for Buncombe County, North Carolina.

10. ***Entire Agreement:*** This Settlement Agreement constitutes the entire understanding and agreement between and among the Parties hereto with respect to the matters herein and supersedes all prior discussions and written and oral agreements with respect hereto.

11. ***Binding Nature of Settlement Agreement:*** This Settlement Agreement shall be binding upon, and inure to the benefit of, the Parties hereto, and their agents, employees, officers, directors, shareholders, successors, and/or assigns.

12. ***Amendment:*** The terms of this Settlement Agreement may not be amended, modified, or waived, except by written agreement duly executed by the Parties hereto.

13. ***Incorporation of Recitals:*** The recitals contained in this Settlement Agreement are a material part of this Settlement Agreement and are incorporated by reference and included as part of this Settlement Agreement.

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14. **Expenses:** The Parties agree to pay and bear their own attorneys' fees and all other costs and expenses in connection with the OAH Action and disputes described in this Settlement Agreement and in connection with this Settlement Agreement.

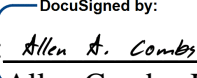
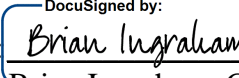
15. **Authority of Representatives:** VSHC and Smoky represent and warrant that their undersigned representatives have been, and are, duly, properly, and fully authorized to sign and enter into this Settlement Agreement on their behalf, and that they have not transferred, assigned, or conveyed to any other entity, person, or agency any of the obligations, claims, causes of action, rights, interest, or title which are the subject of this Settlement Agreement.

16. **Counterparts:** This Settlement Agreement may be executed in any number of duplicate originals or separate counterparts, all of which together shall constitute one and the same instrument.

WHEREFORE, Vocational Solutions of Henderson County, Inc. and Smoky Mountain LME/MCO each execute this Settlement Agreement, under "Seal," effective as of the day and year first above written. Each Party signing below recognizes and agrees that its or his signature is signed with the intent that this Settlement Agreement is executed as a sealed instrument.

Vocational Solutions of Henderson County, Inc., a North Carolina non-profit corporation

Smoky Mountain Local Management Entity/Managed Care Organization

By:  (Seal) By:  (Seal)
Allen Combs, Executive Director Brian Ingraham, Chief Executive Officer